

**§ 261. Contracts authorized within limit of cost fixed, though appropriations are in part only**

On and after May 30, 1908, in all cases where appropriations are made in part only for carrying into effect the provisions of legislation authorizing the acquisition of land for sites or for the enlargement of sites for public buildings, or for the erection or remodeling, extension, alteration, and repairs of public buildings, the Administrator of General Services unless otherwise specifically directed, may enter into contracts within the full limit of cost fixed by Congress therefor.

(May 30, 1908, ch. 228, §34, 35 Stat. 545; 1939 Reorg. Plan No. I, §303(b), eff. July 1, 1939, 4 F.R. 2729, 53 Stat. 1427; June 30, 1949, ch. 288, title I, §103(a), 63 Stat. 380.)

TRANSFER OF FUNCTIONS

Functions of Federal Works Agency and of all agencies thereof, including Public Buildings Administration together with functions of Federal Works Administrator transferred to Administrator of General Services by section 103(a) of act June 30, 1949, which is classified to section 753(a) of this title. Federal Works Agency (including the Public Buildings Administration) and office of Federal Works Administrator abolished by section 103(b) of act June 30, 1949.

Functions of Secretary of the Treasury relating to Administration of Public Buildings Branch of former Procurement Division of Treasury Department and to selection of location and sites for public buildings transferred to Federal Works Administrator by Reorg. Plan No. 1 of 1939.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, ch. 288, 63 Stat. 380, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of this title.

CROSS REFERENCES

Appropriations, expenditures or contract obligations in excess of funds prohibited, see section 1341 of Title 31, Money and Finance.

Contracts for erection, repair, or furnishing of public buildings or for public improvements forbidden to exceed amount appropriated for that purpose, see section 12 of Title 41, Public Contracts.

No appropriation act to be construed as authorizing execution of contract for amount in excess of appropriations unless appropriation act in specific terms declares that contract may be made, see section 1301 of Title 31, Money and Finance.

Officer or employee contracting beyond specific appropriation, see section 435 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 sections 79g, 460bb-2.

**§§ 262 to 265. Repealed. Pub. L. 86-249, § 17(8)-(11), Sept. 9, 1959, 73 Stat. 484, 485**

Section 262, acts Mar. 4, 1909, ch. 299, 35 Stat. 959; May 29, 1928, ch. 901, §1(18), 45 Stat. 987, permitted rental of buildings on lands acquired for sites.

Section 263, act Aug. 7, 1882, ch. 433, 22 Stat. 305, provided that acts passed authorizing purchase of sites and erection of public buildings thereon shall not be held or construed to appropriate money unless the acts in express language make such appropriations.

Section 264, act Mar. 4, 1913, ch. 147, §5, 37 Stat. 879, placed restrictions on authorizations for construction of post offices.

Section 265, acts June 25, 1910, ch. 383, §35, 36 Stat. 699; June 15, 1938, ch. 382, 52 Stat. 683, related to construction of buildings for executive departments or establishments. See section 601 et seq. of this title.

SAVINGS PROVISION

Sections repealed except as to their application to any project referred to in section 613 of this title, see section 17 of Pub. L. 86-249, set out as a note under section 341 of this title.

**§ 265a. Omitted**

CODIFICATION

Section, acts June 26, 1943, ch. 145, title I, 57 Stat. 178; June 27, 1944, ch. 286, title I, 58 Stat. 369; May 3, 1945, ch. 106, title I, 59 Stat. 115; Mar. 28, 1946, ch. 113, title I, 60 Stat. 68, which related to availability of funds for payment of salaries, etc., in connection with construction projects, was not repeated in subsequent appropriation acts and expired with the appropriation acts of which it was a part.

**§ 266. Repealed. Oct. 31, 1951, ch. 654, §1(90), 65 Stat. 705**

Section, act Mar. 3, 1903, ch. 1007, 32 Stat. 1091, related to purchase of, and payment for, specially prepared paper for duplication of plans, and payment for other incidental expenses and supplies, in connection with carrying into effect appropriations for public buildings.

**§ 267. Repealed. Pub. L. 86-249, § 17(12), Sept. 9, 1959, 73 Stat. 485**

Section, R.S. §3734; act June 25, 1910, ch. 383, §33, 36 Stat. 699, prohibited expenditures upon public buildings until after approval of sketch plans. See section 601 et seq. of this title.

SAVINGS PROVISION

Section repealed except as to its application to any project referred to in section 613 of this title, see section 17 of Pub. L. 86-249, set out as a note under section 341 of this title.

**§ 267a. Omitted**

CODIFICATION

Section, act June 30, 1932, ch. 314, §320, 47 Stat. 412, provided for a 10 per centum reduction of limit of cost fixed by authorizations for construction of public buildings and public improvements granted by law prior to June 30, 1932.

**§ 268. Repealed. Pub. L. 86-249, § 17(7), Sept. 9, 1959, 73 Stat. 484**

Section, act Mar. 2, 1889, ch. 411, 25 Stat. 941, prohibited approval of plans for public buildings until after site therefor shall have been finally selected. See section 601 et seq. of this title.

SAVINGS PROVISION

Section repealed except as to its applications to any project referred to in section 613 of this title, see section 17 of Pub. L. 86-249, set out as a note under section 341 of this title.

**§ 269. Repealed. Oct. 31, 1951, ch. 654, §1(91), 65 Stat. 705**

Section, act June 6, 1902, ch. 1036, §21, 32 Stat. 326, related to liquidated damages for delay in connection with contracts for construction or repair of public buildings or works, and to suits thereon. See section 256a of Title 41, Public Contracts.

**§ 269a. Omitted**

CODIFICATION

Section, acts Sept. 9, 1940, ch. 717, title I, 54 Stat. 873; Oct. 8, 1940, ch. 756, title I, 54 Stat. 968; June 30, 1941, ch.

262, 55 Stat. 375, which limited, after Sept. 9, 1940, the contractor's fee for construction and installation of buildings, etc., at military posts, to 6 per centum of the estimated cost, exclusive of the fee, has not been repeated in subsequent years, except as a temporary measure and expired with the appropriation acts of which it was a part.

**§ 270. Repealed. Aug. 24, 1935, ch. 642, § 5, 49 Stat. 794**

Section, acts Aug. 13, 1894, ch. 280, 28 Stat. 278; Feb. 24, 1905, ch. 778, 33 Stat. 811; Mar. 3, 1911, ch. 231, § 291, 36 Stat. 1167, related to bonds of contractors for buildings or works. See sections 270a to 270d-1 of this title.

The repealing section provided that section should remain in force with respect to contracts for which invitations for bids had been issued on or before sixty days after August 24, 1935, and to persons and bonds in respect of such contracts.

**§ 270a. Bonds of contractors of public buildings or works**

**(a) Type of bonds required**

Before any contract for the construction, alteration, or repair of any public building or public work of the United States is awarded to any person, such person shall furnish to the United States the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond with a surety or sureties satisfactory to the officer awarding such contract, and in such amount as he shall deem adequate, for the protection of the United States.

(2) A payment bond with a surety or sureties satisfactory to such officer for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the terms of the contract shall be not more than \$1,000,000 the said payment bond shall be in a sum of one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$1,000,000 and not more than \$5,000,000, the said payment bond shall be in a sum of 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than \$5,000,000 the said payment bond shall be in the sum of \$2,500,000.

**(b) Waiver of bonds for contracts performed in foreign countries**

The contracting officer in respect of any contract is authorized to waive the requirement of a performance bond and payment bond for so much of the work under such contract as is to be performed in a foreign country if he finds that it is impracticable for the contractor to furnish such bonds.

**(c) Authority to require additional bonds**

Nothing in this section shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to those, or in cases other than the cases specified in subsection (a) of this section.

**(d) Coverage for taxes in performance bond**

Every performance bond required under this section shall specifically provide coverage for taxes imposed by the United States which are collected, deducted, or withheld from wages paid by the contractor in carrying out the contract with respect to which such bond is furnished. However, the United States shall give the surety or sureties on such bond written notice, with respect to any such unpaid taxes attributable to any period, within ninety days after the date when such contractor files a return for such period, except that no such notice shall be given more than one hundred and eighty days from the date when a return for the period was required to be filed under title 26. No suit on such bond for such taxes shall be commenced by the United States unless notice is given as provided in the preceding sentence, and no such suit shall be commenced after the expiration of one year after the day on which such notice is given.

(Aug. 24, 1935, ch. 642, § 1, 49 Stat. 793; Nov. 2, 1966, Pub. L. 89-719, title I, § 105(b), 80 Stat. 1139; Nov. 2, 1978, Pub. L. 95-585, 92 Stat. 2484; Oct. 22, 1986, Pub. L. 99-514, § 2, 100 Stat. 2095; Oct. 13, 1994, Pub. L. 103-355, title IV, § 4104(b)(1)(B), 108 Stat. 3342.)

**AMENDMENTS**

1994—Subsec. (a). Pub. L. 103-355 struck out "exceeding \$25,000 in amount," after "Before any contract" in introductory provisions.

1986—Subsec. (d). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95-585 substituted "\$25,000" for "\$2,000".

1966—Subsec. (d). Pub. L. 89-719 added subsec. (d).

**EFFECTIVE DATE OF 1994 AMENDMENT**

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

**EFFECTIVE DATE OF 1966 AMENDMENT**

Amendment by Pub. L. 89-719 applicable to contract entered into pursuant to invitations for bids issued after June 30, 1967, see section 114(c)(2) of Pub. L. 89-719, set out as a note under section 6323 of Title 26, Internal Revenue Code.

**EFFECTIVE DATE**

Section 5 of act Aug. 24, 1935, provided in part: "That this act [enacting this section and sections 270b to 270d of this title] shall take effect upon the expiration of sixty days after the date of its enactment [Aug. 24, 1935], but shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract." [Another section 5 of act Aug. 24, 1935, is classified to section 270d-1 of this title].

**SHORT TITLE**

Section 6 of act Aug. 24, 1935, as added by Pub. L. 103-355, title X, § 10005(f)(1), Oct. 13, 1994, 108 Stat. 3408, provided that: "This Act [enacting this section, sections 270b to 270d-1 of this title, and provisions set out as a note above] may be cited as the 'Miller Act'."

**ALTERNATIVES TO PAYMENT BONDS PROVIDED BY  
FEDERAL ACQUISITION REGULATION**

Section 4104(b)(2) of Pub. L. 103-355 provided that: